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May 19, 2000

*VIA HAND DELIVERY*

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals - TW-A325  
445 Twelfth Street, S.W.  
Washington, DC 20554

RECEIVED

MAY 19 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Ex Parte*  
CC Docket No. 96-262  
CC Docket No. 94-1

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) and (2) of the Commission's rules, 47 C.F.R. Section 1.1206(b)(1) and (2), this letter will provide notice that on May 18, 2000 Richard J. Metzger, Vice President, Regulatory Affairs and Public Policy, Focal Communications Corp., Jonathan Askin, General Counsel, the Association for Local Telecommunications Services, and the undersigned met with Sarah Whitesell, Legal Advisor, Office of Commissioner Gloria Tristani concerning issues in the above-captioned proceeding.

We stated that the proposed rule changes that would permit CALLS ILECs to apply X Factor reductions for the purpose of establishing a "glidepath" to reduced local switching rates, rather than to adjust capped rates to reflect estimated changes in ILEC productivity, would be arbitrary. There is no basis in the present record or any of the Commission's long-standing decisions developing the X Factor for applying productivity reductions for purposes unrelated to productivity. Nor is there any need for the requested rule changes to permit CALLS ILECs to establish a "glidepath" to reduced switching rates since they may reduce those rates merely by filing revised tariffs. At the same time, the proposed targeting of productivity reductions to traffic sensitive services without regard to productivity risks substantial competitive harm. The Commission has previously recognized that the application of the X Factor can have serious

economic impacts on ILECs, end users, and others.<sup>1</sup> For this reason, the Commission has previously required that productivity reductions be applied uniformly across price cap baskets.<sup>2</sup> Focal has already explained why previous targeting to the TIC does not violate the Commission's requirement of uniform application of X Factor reductions across baskets.<sup>3</sup> Moreover, amending price cap rules to address competition in switched access services before the Commission has made any of the prerequisite findings in the separate pricing flexibility phase of this docket concerning when or if there is sufficient competition in switched access services to warrant amendments to price caps on account of competition would be arbitrary.<sup>4</sup> It is also disturbing that CALLS ILECs, rather than simply filing tariffs to reduce switching rates, seek instead to use X Factor reductions to meet competition. By employing X Factor reductions for this purpose, CALLS ILECs would maximize revenue by avoiding the need to make reductions to meet competition in addition to X Factor reductions. Thus, NASUCA has pointed out that CALLS ILEC revenues would go through the roof under the CALLS proposal.<sup>5</sup>

Focal stresses that the facts that CALLS ILECs have voluntarily negotiated the proposed application of productivity reductions, and that price cap ILECs would be able to opt-in to the CALLS plan, does not render the proposed rule changes any less arbitrary. Any voluntary nature of this plan merely accentuates that ILECs are attempting to obtain arbitrary and anticompetitive rule changes. In addition, the fact that CALLS candidly admits that it proposes to use X Factor reductions for purposes other than productivity would not make it any less arbitrary for the Commission to adopt this proposal.<sup>6</sup>

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<sup>1</sup> *Price Cap Performance Review, Access Charge Reform*, Further Notice of Proposed Rulemaking, CC Docket Nos. 94-1, 96-262,, FCC 99-345, released November 15, 1999, para. 14.

<sup>2</sup> 47 U.S.C. Sections 61.45(b)(1) and (c).

<sup>3</sup> Letter from Focal Communications Corp. to Magalie Roman Salas, CC Docket No. 96-262, filed May 8, 2000, p. 3; Comments of Focal Communications Corporation, CC Docket No. 96-262, filed April 3, 2000, p. 7.

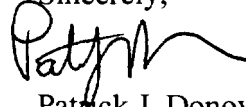
<sup>4</sup> *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, FCC 99-206, released August 27, 1999.

<sup>5</sup> NASUCA Comments, Attachment 1.

<sup>6</sup> CALLS Reply Comments, CC Docket No. 96-262, filed April 17, 2000, p. 42.

Accordingly, CALLS's proposed application of the X Factor is flatly unlawful. These views are also presented in the attachment to this letter, which was provided at the meeting.

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Sincerely,  
  
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## **CALLS PROPOSAL ISSUES**

### X-Factor Targeting Is Arbitrary

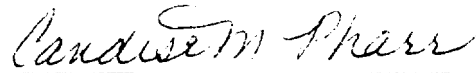
- X-Factor is a measure of LEC productivity as a whole.
- CALLS would effectively apply different X-Factor reductions to different service categories irrespective of productivity.
- CALLS admits that the proposed X-Factor targeting is unrelated to productivity.
  - Focal incorrectly assumes that "the X-Factor under CALLS is still supposed to be a measure of productivity changes." Instead, the X-Factor "prescribes a glidepath" to the target switched access rates. CALLS 4/17/2000 Reply Comments p.42.
- Switched service reductions to meet goals other than productivity- such as pricing to meet competition or achievement of lower rates-of-return for switching - require an independent justification.
- Targeting X-Factor reductions for non-productivity purposes undermines price cap regulation. The Commission has recognized that incorrect X-Factors can create economic distortions. *X-Factor Remand NPRM*, para. 14.
- Current X-Factor targeting for non-productivity purposes has not been specifically judicially approved.

### The Universal Service Fund Is Arbitrary

- Heretofore, the Commission has envisioned that universal service funds would be set based preferably on economic models, or cost studies.
- There is no record support that the proposed \$650M fund correctly assesses implicit support in access charges.
- Even USWest admits the fund is arbitrary. US West 4/3/2000 Comments p. 4.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent by hand delivery, on this 19<sup>th</sup> day of May, 2000 to the parties on the attached list.



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